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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,905	06/24/2003	James A. Hoff	1104-750/ RKE-075	2171

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/602,905

Applicant(s)

HOFF, JAMES A.

Examiner

James N. Smalley

Art Unit

3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-5, 7-9 and 13-17.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


NATHAN NEWHOUSE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are not found to be persuasive.

Regarding the rejection of claim 1 in view of Bradshaw et al. US 4,105,135, Examiner notes the claim is drawn to the closing plug "for receipt by" a threaded flange (emphasis added). Therefore, in order to anticipate the claim, a reference need only disclose all claimed structure of the apparatus, and, be capable of performing the intended use, i.e. limiting the threaded advancement of the plug by abutment of one or more of the plurality of axially-protruding projections against a surface of the drum end. In this case, the closing plug of Bradshaw '135 could be applied to another threaded flange, such as that of Baughman US 5,971,189, whereby the projections would abut a surface of the drum end. In fact, it can be clearly seen in the cover figure of the Baughman '189 patent that a similarly-dimensioned axial projection abuts a drum surface, and prevents advancement. Therefore, it is the Examiner's position that the plug of Bradshaw '135 is capable of being used in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Regarding the rejection of claim 13 over Baughman US 5,680,953, Examiner notes the wall (56) merely serves to enclose the gasket, by defining groove (44). Wall (32) provides tamper protection by preventing access to the gasket. Therefore, the Examiner's position that the wall could be formed of separate, spaced elements, would be an obvious modification to one having ordinary skill in the art. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, it has been held that rearranging parts of an invention involves only routine skill in the art. In re *Japikse*, 86 USPQ 70. Examiner notes with regard to claim 13, the only structural difference between Baughman '953 and the claimed invention, is the segmenting of the plug flange. It is the Examiner's position that the instant invention is an obvious variant of the structure disclosed by Baughman '953, in view of patent law precedent and ordinary skill. Furthermore, Examiner notes the claim is drawn to a drum closure "for a drum end" and notes the contact which limits the threaded advancement of the closure occurs between the claimed projections on the closing plug, and between the drum end, to which the closing plug is to be applied. In other words, the claimed threaded flange and closure plug must only meet all claimed structural limitations of the instant invention, in order to be capable of being used in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Regarding the rejection of claim 13 over Ziegler et al. US 4, 124,140 in view of Bradshaw et al. US 4,105,135, Examiner asserts the plug of Bradshaw '135 could be applied to the drum of Ziegler '140 (or to the drum of Baughman '953) and function in the intended manner. Furthermore, Examiner notes the claim is drawn to a drum closure "for a drum end" and notes the contact which limits the threaded advancement of the closure occurs between the claimed projections on the closing plug, and between the drum end, to which the closing plug is to be applied. In other words, the claimed threaded flange and closure plug must only meet all claimed structural limitations of the instant invention, in order to be capable of being used in the intended manner. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).